



Building Relationships with Albertans

Municipality Report

April 2020

If you have any questions about the Alberta Ombudsman, or wish to file a complaint with us, please get in touch. We are here to help.

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Foreword

Municipalities play a vital role in contributing to Alberta's way of life and the well-being of its citizens. As Albertans, we count ourselves particularly fortunate for the beauty and diversity of each city, town, county and village. It is here, in our prairie province, we find a unique sense of who we are and the communities we call home.

In Canada, municipalities serve as local government and are responsible for providing services, facilities, safety and infrastructure for their communities. In Alberta, the *Municipal Government Act* (MGA) guides how municipalities function, how they provide services that in the opinion of council are necessary or desirable for all or a part of the municipality.

It was about this time, two years ago on April 1, 2018, amendments to the MGA expanded the role of the Alberta Ombudsman to include municipalities as an authority under the office's jurisdiction. Our office works to protect Albertans by responding to complaints of unfair treatment by provincial government authorities, municipalities, the Patient Concerns Resolution Process of Alberta Health Services, health professions and other designated professional organizations. We operate under the *Ombudsman Act* to conduct independent investigations, promote standards of fairness and when necessary, make recommendations to improve administrative processes.

In this report, the first of its kind released by our office, we describe what we have learned in providing oversight of this new jurisdiction. Our opening article, *Building Relationships and Finding Common Ground* - one case at a time, highlights the benefits of a collaborative approach in resolving complaints. We tell the story of working with Municipal Affairs in our respective roles and how we reached out to both rural and urban municipal administrators through various municipal associations. Perhaps most importantly, we relay the experiences of municipal complainants through specific case examples, modified to protect the confidentiality of the complainant.

The stories we hear from Albertans having trouble while accessing municipal government programs and services can offer valuable insights into how frontline services are delivered. In sharing these observations, we aim to give voice to those affected by the issues and provide the opportunity for improvements across the greater public service.

Marianne Ryan
Alberta Ombudsman

Introduction

Building Relationships and Finding Common Ground one case at a time

Since the Alberta government assigned the Alberta Ombudsman the authority to investigate municipalities, effective April 1, 2018, the primary task of her office has been instilling confidence in municipalities and complainants that involving the Ombudsman is a fair and effective way to resolve complaints. The Ombudsman investigates matters of administration, not policy decisions made by elected councils. Distinguishing between the two often requires careful consideration and explanation.

In recognition that municipalities might find oversight from a third party an adjustment, the education process started before April 1, 2018. The Ombudsman worked with the Municipal Affairs ministry to inform chief administrative officers and senior officials about what to expect when contacted by the Ombudsman. The Ombudsman and her staff met civic leaders at meetings of municipal associations and through direct contact. The Ombudsman continues to accept invitations to gatherings of municipal leaders. Building functional relationships is a prerequisite allowing the Ombudsman to effectively help parties resolve issues in a timely manner.

After going live on April 1, 2018, theory became practice. Municipalities began hearing from the Ombudsman as a result of complaints received from citizens and municipal officials about their municipality. The first consideration by an Ombudsman investigator is to ensure the citizen has completed the review and appeal processes within the municipality. If not complete, the Ombudsman's involvement is premature and the complainant will be referred back to the jurisdiction with advice on how to proceed to the next step.

Typically, when the Ombudsman becomes involved, investigators ask for and receive key documents from the municipality, including the decision itself and applicable policy. Where reluctance has been encountered, experience with our office tends to lead towards greater acceptance. At first, an official designated to respond may suspect an intention on the part of the Ombudsman to force change on the municipality without respecting its circumstances and ways of doing things.

Eventually through collaboration, the official hopefully sees the goal of the investigator is not to find fault, but to resolve the complaint for both the municipality and the citizen.

Addressing the complaint, rather than laying blame, has been the common approach in the first two years of the Ombudsman's jurisdiction dealing with municipalities. Investigators ensure that actions and policy are congruent with the *Municipal Government Act* (MGA). The investigator engages in conversations with the complainant and designated municipal official to gain a full understanding of the issue. We call this process "early resolution." Some complaints are settled at this point. Often it is found the municipality acted with good reasons and within its prescribed authority, but when the official is asked if the same information has been provided to the complainant, the answer is frequently "no." Even when the municipality has attempted to explain, misunderstandings can occur. In almost all cases, when asked to offer a better explanation to the citizen, the official agrees. In many cases, at this point, the complainant finally understands the actions taken or the decision made.

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The investigator asks the citizen to consider the new information and advises that if they still believe the situation is unfair they may write back to the Ombudsman explaining what they believe is unfair, and why. Based on their informed complaint, the Ombudsman will then consider a full investigation. Most complainants do not write back, presumably because they are satisfied with the outcome. Another common result from the collaborative approach is once all possible information has been provided, the investigator can refer the citizen to another level of review. Another possibility is the municipality may agree to consider new information from the complainant and rethink a portion of its decision or offer some compromise. In our view, the informal resolution approach has worked well; we have only moved forward with full investigations in nine cases in the 2018-19 fiscal year.

The willingness to work with the Ombudsman is not related to the type or size of the municipality. Some of the smallest villages express relief when afforded the opportunity to consult with a third party on how to resolve complaints, particularly from chronic or persistent complainants. At the other end of size spectrum, one city initially resisted the idea of early resolution and wanted all complaints opened for full investigation, a more time consuming and labour intensive alternative for them, as well as for the Ombudsman and the complainant.

Later in the year, the city reassessed this position and in some cases accepted our early resolution process as a more effective approach.

The Ombudsman initially prepared to take on the new responsibilities by consulting with other provinces and the Municipal Affairs ministry. Municipal Affairs continues to be a valuable resource for Ombudsman investigators.

One of the insights gained from the consultation process with the key stakeholders was municipalities across the province vary greatly in how they exercise their responsibilities. Now that we are operational, our experience confirms and reinforces that insight.

Obviously, the cities of Edmonton and Calgary operate differently than a small village or rural county, but even towns of the same size vary widely in approach. One difference can be the role of mayor and council. In some towns, the administration might render a final decision on an issue while in other towns the issue might be advanced to the council for a final review. The Ombudsman does not comment on the political decisions of elected officials as it is outside jurisdiction and doing so would usurp the prerogative of the voters. However, when council acts as a level of administrative appeal, the Ombudsman is not precluded from investigating the actions of the municipality. Separating political from administrative decisions is a matter of judgment and continues to challenge the Ombudsman's office, in some cases requiring a legal opinion.

Determining jurisdiction is not always easy. For example, a citizen complained about a board whose members were appointed by several local municipalities, but not controlled by any one town or county. The Ombudsman's authority over each board needs to be evaluated individually. Likely, the Ombudsman had jurisdiction in this instance, but no determination was necessary because the investigator referred the complainant to another effective external appeal mechanism offered by the Alberta government.

The Ombudsman's office has 52 years of experience in the traditional mandate of investigating matters of administration involving the provincial government and understands that structure very well. Government departments vary, but are organized in a consistent fashion. This is not true at the municipal level. They operate with considerable leeway, as long as their organization is compliant with the MGA and related regulations. One of the pleasant surprises

is even small Alberta municipalities have demonstrated a high awareness of the MGA and the need to operate within it.

During the Ombudsman's first year of jurisdiction over municipalities, we received 461 complaints (263 phone inquiries and 198 in writing). At that time, development issues were prominent including zoning, building permits and decisions of the Subdivision and Development Appeal Boards.

Several complaints involved quality of life issues, such as barking dogs, fences, excess noise, industrial odours and dust, junk or actions of neighbours. Because these matters affect people every day in their homes, complainants take them personally. They expect a municipal solution which is often hard to achieve. Addressing the source of strong odours one day, doesn't guarantee they won't reoccur next week. To date, most of the effort to educate parties about the Ombudsman's role has been directed at the municipal side because their understanding of the process was seen as a requirement for the effective resolution of complaints. Going forward, more focus will be placed on informing the public of the Ombudsman's municipal jurisdiction.

The following is an overview of specific cases (anonymized) and general themes the Ombudsman's office has seen since April 1, 2018.

Example 1 – A Better Explanation



A thorough explanation can go a long way to satisfying a complainant, even when the resolution may not fully correct the underlying problem. Mathew Lott (name changed) had lived in his home for many years when he began to experience flooding. He suspected it was caused by infill redevelopment in his neighbourhood.

When Mr. Lott first contacted the Ombudsman, inquiries showed the city had investigated and had asked some of his neighbours to take corrective action. The case was closed as action was being taken. Some work was in fact completed, but not exactly what Mr. Lott expected. He made inquiries again with the city, but by then it was winter. The city said it would send an

inspector in the spring if he experienced flooding again. Not satisfied with the city's response, Mr. Lott once again contacted the Ombudsman.

The Ombudsman investigator suspected better communication might help. The city had tried to address the situation, but its explanations lacked clarity.

The investigator met with a city official who offered to give a better explanation to the complainant about the city's investigations of the flooding and its conclusions.

In late spring the city manager wrote to the complainant making the following points:

- an engineering consultant hired by the city found Mr. Lott's backyard was the low point in the neighbourhood;
- the infill property was not the cause of the flooding as it had been graded in accordance to the bylaw;
- the city had required other adjacent landowners to take steps to ensure they were in compliance with the grading bylaw; and
- a recent inspection written by the city manager showed a potential problem on the third property was not contributing to the flooding.

The city manager said the solution was for Mr. Lott to regrade his lot to bring it into compliance with grading bylaw, or possibly seek another engineering solution.

The complainant thanked the Ombudsman for working with the city. He understood the city's position at last. He knew his neighbours had acted in compliance with the bylaw. At that point he still did not know if the corrections made by his neighbours had fixed the flooding for good, but he was in a better position to consider his options. The CAO also thanked the Ombudsman investigator for her work in resolving the complaint.

Example 2 – More Information Needed



In a small municipality, where residents encounter the village managers in the local grocery store, it may seem unlikely these people have real power. A property owner in rural Alberta

found that when a manager operates within the authority of the MGA strong action can be taken.

A village served notice on the property owner that her yard should be cleaned up to meet the standards established in bylaw. When there was no response, a notice of entry was mailed to the property owner and, for good measure, a copy of the notice was posted on the fence surrounding the yard. When the property owner remained unresponsive, the village hired a crew and sent it into the yard. The property owner was responsible for the costs. When the bill was eventually sent out, it exceeded \$1500.

The property owner took the position she never received notice until she returned home one day to find a crew in her yard. In her complaint to the Ombudsman, she reported that she asked the crew to leave, but it refused. That she asked the crew to leave immediately is disputed by the village. In any case the property owner claimed the cleanup crew damaged some of her property.

On receipt of the complaint, the village administrators willingly cooperated with the Ombudsman investigator. The investigator asked for and obtained the village bylaws and notices sent out to the complainant. The investigator also consulted the complainant and reviewed the MGA. The investigator found no reason to believe the village exceeded its authority. Even a question of whether the notice on the fence was a privacy breach was considered, but the village had consulted a privacy consultant who advised the notice could be posted.

The Ombudsman's activities did not solve the complainant's concerns, but she did benefit in at least two ways. The village administrators explained much more fully to the property owner why it acted as it did and where its authority came from. Ideally, the explanations are provided prior to the Ombudsman's involvement since sometimes thorough explanations forestall complaints, but whether it would have made a difference will never be known. Secondly, the village was open to considering compensation for any property damaged in the yard. The property owner said she had photographs and she was invited to submit them.



Example 3 – Committees

While one voice is strong, often a group of voices can have a bigger impact. Last year, the Ombudsman's office received two different complaints from citizens committees formed in their own municipalities. The first had concerns about their village's air quality. The second took issue with the potential health hazards, smell, and general inconvenience of residing near a new gravel pit.

Residents had first raised their concerns as individuals before writing to their municipal administrations as a committee. The Ombudsman became involved when the committees believed they were at an impasse with their respective CAOs.

The Ombudsman investigator's reviews in both cases found a municipality and administration team that was involved and engaged. The CAOs in both communities were well aware of the issues raised and acknowledged the perspectives of the committees.

The review also determined that Alberta Environment and Parks (AEP) was involved. In one situation, it was determined that AEP already had an investigation underway into the issue. They were working with the municipality in attempts to find meaningful solutions to the potential health hazards of the gravel pit. In the other case, an AEP Air Quality Specialist acknowledged the lack of resources the small municipality had. The specialist requested AEP make it a priority to find the resources to test the air quality for this village.

In both cases, the committees were left in the dark about what was going on. There was a lot of work being done by municipalities and the provincial ministry but this was not easily accessible information.

With the Ombudsman's involvement, CAOs and AEP each appointed contact people who could openly share information and updates with a committee representative. The best result from these early resolution cases was an increase in direct, transparent communication between a municipality, a provincial ministry and residents who bonded over a common concern.



Example 4 – Knowing Your Legislation

Having bylaws in place that are in keeping with legislation is a must. Equally important, is understanding what those bylaws and legislation say and knowing how to share this with residents.

Earlier this year, Terri Gilbert (name changed), wrote to the Ombudsman's office with concerns that the city in which she operates a 30-unit apartment complex just raised its flat rate for water services for multi-unit buildings. She explained that half her units were vacant and she questioned why the city was able to charge for vacant units and how the city could just increase rates.

The CAO in this case provided a thorough explanation for the reasons behind the water rate raise. What was missed though, was the CAO's authority to make this decision. What rules are in place that say a CAO can do what they did? In conversations with an Ombudsman investigator, the CAO stated that he knew he was allowed to raise water rates but did not know exactly why.

There is no denying that the MGA is a big document – one of the largest pieces of legislation in Alberta. But knowing you can do something and knowing why you can are different. The CAO came back to the Ombudsman shortly after with specific sections of the MGA, outlining the municipality's authority to set their own water rates. He also provided the bylaw which defined multi-unit residences and outlined how water rates are set. He agreed to share this information with Ms. Gilbert and the case closed.

Similarly, CAOs knowing legislation, regulation, and municipal bylaws has proven to be very beneficial for municipalities dealing with complaints about public participation, land use, development projects, taxes, and a wide array of other issues.



Example 5 – Making Good Contacts

The Ombudsman has been investigating complaints of administrative fairness for 52 years.

Our relationship with municipalities is now just over two years old. It is understandable that these relationships, both with the administration and residents within a municipality, will take time to build.

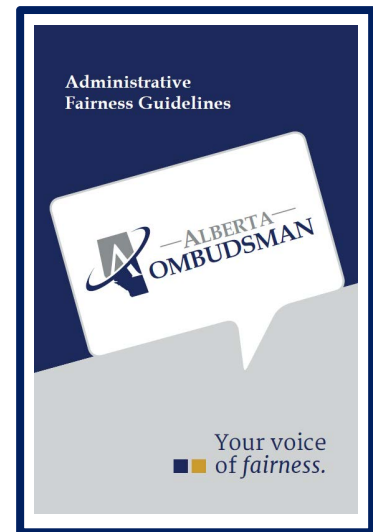
In the fall of 2018, Ombudsman investigators made dozens of phone calls to various municipalities across Alberta. The purpose was to make that first contact - to explain what our office does, what our purpose is and how a collaborative relationship will benefit everyone.

And so far, having one, or several, positive contacts within a municipality has proven to be effective and efficient in resolving complaints. For the municipality, it means having the knowledge of the Ombudsman's role and the understanding of what an investigator means when they say "early resolution" or "administrative fairness guidelines." For the complainant, positive relationships between the Ombudsman and the municipality's administration can mean a faster resolution of a case and a potentially more collaborative outcome.

For Doug Simons (name changed), a collaborative relationship between the Ombudsman and the City of Edmonton meant a speedy resolution after he was provided incorrect information from 311, the local municipal information line. An Edmonton 311 operator told Mr. Simons

that he had no avenue to complain about a neighbour not following an original plot plan. The Ombudsman investigator telephoned our contact with the city administration and learned this was not accurate and the complaint could be directed to the Planning and Development Department. The Ombudsman's involvement in this case ensured the following: the complainant was quickly provided correct information by the city and the city was able to follow up with 311 to confirm the sharing of accurate referrals.

Tracy Jones (name changed), with an unpaid animal control bill, and Steve Schaffer (name changed) with an incorrect parking tag, also benefited from calls made by the Ombudsman to our contact point at the City. Both received prompt service and correct information.



In determining fairness, the Alberta Ombudsman uses fairness guidelines rooted in administrative law. Download them at www.ombudsman.ab.ca



Example 6 – Decisions of Elected Councilors

When can the Ombudsman investigate decisions of elected councilors? When political issues are voted on by elected councilors, an appointed official like the Ombudsman must respect the democratic process and allow those decisions to proceed unchallenged. A political decision might be approving the budget or passing a bylaw to bring in photo-radar. At that level it is the responsibility of town's voters, not the Ombudsman, to evaluate council's performance.

Administrative decisions are usually made by employees of the town and are based on the bylaws passed by council. Sometimes municipal councils consider the application of bylaws. In such cases, the Ombudsman may investigate the fairness of council's decision. Distinguishing between political and administrative decisions has been a challenge for Ombudsman investigators.

A relatively straightforward example comes from a small Alberta town where a resident paid his yearly property taxes five minutes late, but still received a charge of almost \$2000 for arrears. The taxpayer wrote to the Ombudsman: "I emailed my plight to (the) mayor." The mayor took the case directly to council. In a city or large county, appeals about tax arrears would never make it to council. In very small municipalities, council involvement might be the only alternative.

A principle of administrative fairness is all decisions should be subject to review. If a village only has a handful of employees, there may be no one else to review decisions. Nothing forbids council from acting as a review body.

The taxpayer was able to make his case before council. He pointed out he had a record of paying on time and he put his payment into the town's drop box only minutes after the town office closed. He also argued other municipalities in the region would have forgiven the arrears. There was a dissenting vote, but the majority of council ruled it had to apply its bylaw consistently. The deadline had been published on tax notices and in advertisements. The arrears were applied consistent with the town bylaw. The arrears were not forgiven.

The Ombudsman investigator reviewed the notices, advertisements, town bylaw and concluded the town acted within its authority. Following the council decision, the taxpayer tried to appeal the council decision back to the chief administrative officer (CAO). The CAO refused to reconsider a decision of council. The Ombudsman would have expected a review at a lower level if the request had been made prior to consideration by council, but not afterwards.

Example 7 – Meaningful Review



A meaningful review process is a core component of administratively fair decisions. When Amanda Singh (name changed) contacted the Ombudsman's office in the summer of 2019, she believed she was treated unfairly because she was unable to elevate her complaint to the CAO of her town. Ms. Singh had concerns about the town's road widening project. She had received multiple correspondence from the town's project manager but felt the responses lacked adequate information.

The Ombudsman opened an early resolution case in an attempt to gain an overview of the town's policies, how these were in keeping with the MGA and whether there is a meaningful review process in place.

The Ombudsman investigator learned that the town was well aware of Ms. Singh's complaints. The investigator also learned that the town had provided several responses in which it thoroughly explained the reasons for the road widening, their offer to limit the impact it may have on the complainant's property, and a referral to the Ombudsman's office.

The decision did seem to end with the project manager. After consultation, the investigator learned that while an appeal to the CAO was possible, the CAO in this town had delegated her decision-making power specific to this project to the project manager. The CAO's response would not be a new decision but rather would likely uphold the information provided by the project manager. Given this is a large municipality with multiple departments, the investigator determined it is not administratively unfair for the CAO to delegate these decision-making powers.

The typical review process the Ombudsman's office has seen across Alberta involves a decision to the CAO. Most of the time, this is necessary. That said, in Ms. Singh's case, the investigator

determined there was a meaningful review process completed by the project manager and the complainant was able to access this process.

Example 8 – Lacking Policy



Over the past two years, the Ombudsman's office has found that it is more likely than not that a municipality is following their policy, which is rooted in legislation. That said, our investigators' reviews have uncovered cases where municipalities made decisions or took action without supporting policy in place.

In these three examples, the Ombudsman investigations found gaps in policy relating to road hazards, bias during a development permit hearing, and water-related emergencies.

In all cases, the municipalities acted in the ways they knew how to, from practice and experience. But without formal written procedures, it becomes very difficult to demonstrate that decision-making is consistent and principled.

The complainant who hit a pothole did not know the process or policy regarding signage around road hazards. No one involved in the development permit hearing knew how to deal with the lack of impartiality during the hearing. The resident with the water leak was left confused as to why the county treated their leak as an emergency when their neighbour, who experienced the same issue, was not.

Having written policy, rooted in legislation, allows a municipality to point to something concrete when a resident questions the actions taken. It outlines what the rules are and how an administration did, or did not, follow those rules. Sometimes the investigator does not actually disagree with the decision itself, but wants to recommend ways the municipality can demonstrate to a resident that the actions were not arbitrary, rather they were consistent with fairness principles. Applying predetermined guidelines to the situation at hand is an obvious way to accomplish that.

In each of the above examples, the Ombudsman has the ability to recommend the creation of policy or the amendment of what a municipality may currently have in place. These types of

recommendations typically have a broader impact than helping just the one complainant. A robust policy ensures residents know the full picture of what is allowed in their municipality and it safeguards administration against future complaints relating to inconsistent processes.

Example 9 – Exhausting Resources



Many Ombudsman investigators have resided, worked, or spent significant time in at least one rural Alberta community prior to joining the Alberta Ombudsman office. There is an understanding and empathy for small places doing big work. That is not to say that Edmonton, Calgary, Red Deer and Lethbridge don't face their own challenges with resources but services are often spread thinner throughout the many towns and villages in this province.

The Ombudsman acknowledges the multiple hats worn by the CAO who is administering services for seven different summer villages or the tax clerk who is also the finance coordinator, administrative assistant, and communications manager. The Ombudsman also recognizes that a single resident can sometimes drain the limited resources with a wide array of complaints.

In more than one scenario over the past two years, Ombudsman investigators have found a municipality acted in an administratively fair manner when it made the decision to limit contact with residents who were taking advantage of open communication.

The municipalities in these examples had tried many different modes of communication, were clear in their direction, had provided previous warning, cited legislative authority, and most importantly did not cease all contact. Given a unique scenario, where one individual exhausting a municipality's resources impacts other residents, the Ombudsman may simply be looking to ensure a complainant has received a thorough response to their issue and they have the ability to contact the municipality in the future if additional concerns arise.

Additionally, it is not uncommon for the municipality to appreciate the role of the Ombudsman, particularly when a resident is exhausting resources and administration feels they have made every attempt to address the complaint. The Ombudsman's final determination of the administrative fairness of a decision can give a municipality confidence in their actions and ultimately may end the saga of the complaint.



Example 10 – Subdivision Development and Appeal Boards

As mentioned in the introduction, development issues including decisions by Subdivision and Development Appeal Boards (SDAB) have been prominent in the Ombudsman's early interactions with municipalities.

It is challenging to discuss specifics as each municipality is different and each board seems to differ in how they present their decisions to residents. Overall, the Ombudsman's office has reviewed some lengthy, vigorous and detail-filled decisions as well as some decisions where it was difficult to determine what the issue was, let alone how the findings were determined.

In one county, administration has decided the SDAB should use a checklist after a decision was challenged in court. This checklist ensures every hearing follows a consistent, standard process including the specific requirements of the hearing in the MGA. In another municipal district, administration offered training for their board members in administrative fairness. They also meet with hearing participants prior to the day of the hearing to discuss the process, agenda and expectations.

Both a checklist and a pre-hearing meeting are creative strategies the municipalities have implemented on their own to meet the needs of their residents and ensure SDAB hearings are fair and consistent.

Because there is uniqueness in each complaint, there is a flexibility in how SDABs write decisions. The Ombudsman is not asking for, nor does she expect, every SDAB decision be written in the same way. But there are some surefire elements to include in a procedurally fair decision:

- the authority the SDAB has to make the decision;
- what the issue in question is;
- providing in plain language the information that was considered;
- an explanation of how the arguments were weighed;
- a reasonable conclusion that follows a logical process throughout the decision; and
- reasons for why the SDAB made that specific decisions.



Example 11 – Code of Conduct

As a final theme in this report, it is always important for any organization, including municipalities, to have clear expectations around their employees' conduct. Equally important is knowing the process to follow when questions regarding conduct arise.

The conduct of administration and councilors is not an uncommon complaint to the Ombudsman. Our investigators have now reviewed several issues including the bias that may arise from developing personal, professional or even familial relationships in small communities. Further, there are possible issues of pecuniary interest, the suspension of a councilor's duties and even complaints about the process in which one can make a conduct complaint.

Similar to previous examples, the first step is having a code of conduct in place and the second is knowing what it says. The ability to demonstrate how this code is followed and how decisions made are rooted within the code will be beneficial for the municipality, the resident, and the Ombudsman's office should a complaint arise.



Conclusions

Lessons to be Learned

It is still early days with municipalities and we look forward to strengthening collaborative relationships while pursuing fair and just treatment for all Albertans.

Investigators across the Alberta Ombudsman's office agree that relationship-building with municipalities since 2018 has been a strong, positive experience. Each complaint offers an opportunity to make a new contact in a small community or strengthen existing collaboration with larger municipalities. There is ongoing learning, on both sides, as was expected and is a necessary part of the process. The Ombudsman's office is proud of both the relationships being built with the municipalities and the work being done to ensure every Albertan across this province has access to fair administrative decisions.



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